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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/166,625	10/05/1998	DAVID C. MAY	1020-0501	9351

23643 7590 10/22/2002

BARNES & THORNBURG
11 SOUTH MERIDIAN
INDIANAPOLIS, IN 46204

EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/22/2002

36

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/166,625

Examiner

Cheryl Juska

Applicant(s)

MAY, DAVID C.

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-- The MAILING DATE f this communication appears on the cover sh et with the c rresp ndence address --
 Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2002 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . 6) ☐ Other: _____ .

DETAILED ACTION

Response to Amendment

1. Amendment D (After Final), submitted as Paper No. 34 on July 22, 2002, has been entered. Claims 1 and 10 have been amended as requested, while claims 2 and 11 have been cancelled. Thus, the pending claims are 1, 3-10, and 12-17.
2. The indicated allowability of the subject matter of claims 2 and 11, which has now been amended into claims 1 and 10, is withdrawn in view of the new arguments presented below.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1, 3-10, and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,266,390 issued to Garland alone or in view of US 5,368,912 issued to Reaves.

As Applicant noted in the Response to the Final Rejection (Paper No. 29 filed on June 5, 2002), Garland teaches a total thickness of 0.0015-0.004 mils, while the present claims limit nonwoven layer to a thickness of 1-2 mils. Applicant also argued that Garland taught away from producing a dropcloth having the presently claimed thickness. The Examiner respectfully disagrees.

Specifically, the Examiner contends it would have been obvious to one skilled in the art to increase the thickness of the nonwoven layer of Garland, since Garland explicitly states "dropcloths or like covers of greater thickness may be constructed in accordance with the present

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invention.” Yes, Garland cautions that thicker dropcloths may lack the desired flexibility (i.e., drape), but one skilled in the art would readily understand the balance between thickness and flexibility. Particularly, nonwoven fabrics thicker than 0.004 mils are known to still possess ^{flexibility} and drape. Thus, increasing the thickness of the nonwoven material would not destroy the intent of the Garland invention. Additionally, increasing the thickness of the absorbent nonwoven material would increase the strength, durability, and absorbency of the dropcloth. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Therefore, it is argued that claims 1, 3-10, and 12-17 are obvious over the cited Garland and Reeves references.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

cj
October 21, 2002


CHERYL A. JUSKA
PRIMARY EXAMINER